BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: EDWARD M., Claimant, and INLAND REGIONAL CENTER, Service Agency.	OAH No. 2006060473

DECISION

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on November 15, 2006.

Vince Toms, Senior Consumer Services Representative, appeared for the Inland Regional Center (IRC).

Melvin M., claimant's father, represented claimant at the hearing. Claimant was present.

The matter was submitted on November 15, 2006.

ISSUE

Does Edward M. have a developmental disability that qualifies him for regional center services under the Lanterman Act?

FACTUAL FINDINGS

Background

1. Claimant, born September 1, 1990, is a 16-year-old boy who comes from a challenging family situation and has obvious difficulties that make his life and those around

him harder. There is no question that in order to reach his potential he will need and require a variety of supports and service. Without these supports and services he will have an overwhelmingly daunting time fending for himself. He has a loving and devoted father who seeks answers to his obvious challenges and help in finding treatment interventions that will benefit him. He has been evaluated on numerous occasions in different settings and has had differing diagnoses attached to his condition. The father believes that he suffers from mental retardation or a condition under the so called 5th Category and therefore qualifies for regional center services. IRC asserts that there is strong evidence to the contrary. IRC claims that he is not Mentally Retarded nor does he suffer from a condition similar to or closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation but rather suffers from a learning disorder and a psychiatric condition characterized as Attention Deficit/Hyperactivity Disorder (ADHD) and therefore does not qualify for regional center services.

2. This case is about eligibility for services under the Lanterman Act. Some eligibility cases are clear cut, black and white, one way or another. Others, like this one, have a significant degree of grey to them. The best way to capture the essence of this difficult issue is to acknowledge that claimant has significant deficits irrespective of how they are medically or psychiatrically categorized and that these deficits make his life, and that of those around him, exceedingly difficult and challenging. For the reasons expressed below, the weight of the evidence does not support a finding that Edward qualifies for regional center services.

3. Edward's father is one of those quiet, decent, loyal and devoted persons who have placed the needs of others before his own. He was on his way to Arkansas and a well-earned retirement when he took on the role of primary parent to two young people who were actually his grandchildren. Melvin M. is 60 years old and has been widowed since 1975. He had a daughter who had two children. His daughter's life was wasted by drugs to such a degree that her two children were removed from her care and custody and were to be placed in foster homes. In or about 1995, he agreed to take custody of the two children and he subsequently legally adopted them. Edward M. was approximately five years old at the time. Melvin M. did not graduate from high school. However, he was smart and extremely hard working. He was also devoted to his adopted son and daughter and tried to give them a stable life with lots of love, talk and understanding. In many ways Melvin is one of those quiet unassuming heroes in our society.

4. The record in this case demonstrates that Melvin has been the claimant's most consistent and effective advocate. He has fought for "Eddie" all the time. He feels that he has done a wonderful job. Based upon the record in this case, this is an understatement. He describes it as a "wonderful experience" but admits that it has been a lot of work. On of the most rewarding things about all his efforts and sacrifices is his closeness with Eddie. This closeness and affection was apparent from reading the documentary record. It was also clear from observing the interactions of Eddie and his dad during the hearing. They are extremely close. There is much love present.

5. Melvin M. feels that Eddie will always need the protective environment of a home with a parent. He is terrified for Eddie if something happens to him. He has been Eddie's protector and mentor and fears for Eddie's future if something happens to him.

Medical Evidence

6. On or about May 5, 2000, Eddie was assessed by the Corona Norco Unified School District. At that time he was nine years old, in grade 3 in the General Education placement and had been referred for evaluation and assessment due to concerns about academic progress despite a number of instructional interventions. The psychological/ educational study was conducted by a school psychologist, a resource specialist, a classroom teacher and a school nurse. As part of the historical background, it was noted that he had a severe hearing loss in his right ear which is non-correctable. He had been on high doses of Ritalin for ADHD related behaviors and that when the medication was changed to Dexedrine and then to Mellaril there had been deterioration in his behavior. At the time of the school evaluation, Eddie had just been started on Paxil and there was some concern that his recent escalation of behaviors (running away, throwing chairs) was related to the change in his medications.

In the *Behavioral Functioning* portion of the assessment it was noted:

"In assessment Eddie was responsive and very cooperative, and he presented as a very polite and friendly young man. He appeared to put forth a good effort and, in terms of motivation, results appear to be generally valid, though they may represent low estimates of his functioning due to the effects of a new medication and slight vision difficulties-he had also just returned from a 2 day suspension. Eddie was quiet and a little subdued, though he did not appear lethargic or heavily medicated. His attention span appeared to be age appropriate through relatively long sessions. Eddie attempted problems in his frustration range without quitting or complaining, and he displayed an age appropriate need for structure."

In the *Cognitive/Adaptive Functioning* portion of the assessment, it was noted:

"Eddie appears to have average verbal cognitive/reading skills, though performance/visual related skills are significantly weaker. The Wechsler Intelligence Scale for Children Revised (WISC III) was administered in English. This test assesses a student's ability to use verbal and non-verbal skills in problem solving and reasoning. Because performance on this measure can reflect language, behavioral and environmental influences, cognitive scores should be interpreted with great caution. Cognitive scores can, however, be considered valid for the purpose of suggesting a profile of current learning strengths and weaknesses and in providing information that can be considered, along with other data, in estimating Edward's ability levels.

The full scale score on the WISC III was measured in the low average range (FSIQ=83). Performance scores (SS=72-Borderline range) were significantly lower than verbal reasoning scores (SS=95-average range). Scaled scores were extremely

scattered and ranged from a 1 to a 13 (scores between 8 and 10 are usually considered in the average range) which is suggestive of significant differences in learning skills.

Eddie demonstrated strong ability in answering questions involving practical judgment and common sense reasoning. Range of background information, auditory concentration for oral math problems, vocabulary, and ability to transfer codes in a timed test, and visual scanning and discrimination skills were in the average range. Overall, verbal comprehension, auditory memory, visual processing speed, and freedom from distractibility appear to be average. Eddie appears to favor learning which involves auditory and language skills.

Significant weaknesses were noted in puzzle assembly skills, sequencing skills (placing pictures in their correct time sequence), ability to spot essential missing detail, spatial and constructive reasoning skills (assembling blocks into designs), and abstract verbal associative reasoning (telling how two things are alike)."

In the *Visual Perception/Motor Functioning* portion of the assessment it is noted:

"Assessment suggests delayed visual/motor integration skills; also, visual processing does not appear to be Edward's preferred mode of learning. The drawings on the Test of Visual/Motor Integration were scored in the low average range (SS-84; age level 6-11). Errors were noted in integration, forming angles, and visual planning.

. . ."

Under *Language/Auditory Functioning* it was noted:

"Edward's performance on the WISC-III, his general conversational skills, and his responses to test items suggest average receptive and expressive language skills, as well as intact auditory memory and auditory attention. . . ."

Under *Academic Functioning* it was noted:

"Edward's performance on academic measures suggests that he is functioning within expectancy in his academic skills relative to his overall cognitive skills and chronological age (using current cognitive scores and WJ/WIAT scores to compute discrepancy in a regression formula).

Overall academic skills (reading, math, and written language) were in the low average range and correspond to grade equivalencies in the mid to late 2nd grade level. Math was a relative strength, as is reading comprehension and numerical operations.

. . ."

In the *Summary and Recommendations* portion it is noted:

"Edward is a 9 year old 3rd grade student who scores within expectancy in academic skills relative to his cognitive skills and age level. Academic skills appear to be at about the mid to late 2nd grade level, which is in the instructional range of the general education classroom.

Performance in assessment suggests average verbal reasoning skills and auditory processing skills, and significant difficulties with spatial relations skills, visual processing, and performance related reasoning tasks, and visual-motor integration skills. Test results may be influenced by several factors: Eddie was starting a new medication while testing; he did not wear glasses, which improve his acuity slightly in one eye; and he had just returned from a suspension. There are no current reports of significant attendance problems. Significant social/emotional issues are present, and Eddie and his family are receiving counseling services from County Mental Health providers. Edward's performance in assessment currently does not support eligibility for inclusion in a special education program (there currently is not a discrepancy between cognitive and academic scores as required by the State of California in qualification for special education services as a student with learning disabilities) though testing suggests that general educational interventions would be appropriate. The team should strongly consider general educational interventions in supporting Eddie with his weaknesses in visual processing and spatial skills, and in compensating for learning weaknesses by using his learning strengths in the auditory/language area. The team may consider a 504 plan in organizing instructional modifications. School counseling as an adjunct service should also be considered, as well as behavior modification systems for task completion and appropriate coping skills."

7. Approximately four years later, on or about August 18, 2004 claimant was referred for evaluation by the Menifee Union School District to:

"Determine his present functioning and its relation to academic performance and to plan appropriated interventions. It is also for determining his:

-Continuing need for special education
-Least restrictive environment
-Responsiveness to appropriate interventions."

This assessment refers to a prior assessment, done May 5, 2000, and to a finding by the Menifee Union School District in 2002 that he was Learning Disabled. The assessment of August 18, 2004 reflects a significant decline in claimant's performance compared with the assessment of May 5, 2000, referred to above. In terms of testing, he was given the WISC-III. The findings were as follows:

"On the WISC-III Edward received a Verbal IQ score of 74, a Performance IQ score of 60, and a Full Scale IQ score of 65. These results indicate that Edward is

functioning in the lower extreme range of intellectual ability with an estimated FSIQ score between 59 and 71."

He was also administered the Kaufman Brief Intelligence Test (KBIT).

"On the KBIT Edward received an overall level of ability within the well below average range."

There was substantial difference between his subtest scores.

"The difference between subtests of 16 points is significant. His verbal abilities are much stronger than his nonverbal skills."

The *Summary* portion of the assessment, rather than answering questions based on the scores, poses a series of questions. It states in relevant part:

"In terms of specific learning disability, the IEP team together must determine whether Eddie exhibits the following:

1. Whether a severe discrepancy between his intellectual ability and achievement in academic areas exists.
2. Whether the discrepancy (if any) is due to a disorder in one or more of the basic psychological processes and is not the result of any existing environmental, cultural, or economic disadvantages.
3. Whether the discrepancy cannot be corrected through general education services offered within the general instruction program."

8. The record in this case contains extensive reports and findings from a number of mental health professionals. Three such reports relate to a particular medical-legal question that they were asked to answer. That question was whether Eddie was competent to cooperate in a rational manner with counsel to participate in a criminal legal proceeding in the Riverside County Juvenile Court.

9. The incident referred to above relates to an indecent exposure and possible oral copulation with a young child who was two years old at the time. The very young child had told her mother that claimant had his "wiener out" and had her "lick it." The charge in the juvenile court is not relevant to a determination of eligibility for regional center services. Furthermore, although it is clear that this incident did occur, it also appears clear that this young claimant is not evil nor does he fit any profile of a sexual abuser. In one report, by Craig Rath, Ph.D., he references that the minor is "intellectually limited" and that, "He would likely benefit from Inland Regional Center services for which it is highly probable he would be eligible." His conclusion regarding competency was . . . "On the whole, the minor, while he has some abilities, is viewed as not competent to participate in WIC [Welfare and Institutions Code] 602 proceedings."

10. Dr. Harvey Oshrin examined claimant on the appointment of the Juvenile Court judge. He reported to the Juvenile Court judge that, "Intellectual level is estimated to be right on the borderline between mental retardation and so called "borderline intellect'. There probably would be some mild variability among different tests but in general he impressed me as being mildly mentally retarded at worst, and at the lower level of borderline intellect at best. Judgment and insight are poor." In terms of competency, Dr. Oshrin opined that . . . "this boy is just barely competent to stand trial . . . Eddie does presently have the ability on a simplistic level to understand the nature and purpose of the proceedings taken against him. He understands the charge against him to be "Molestation." Obviously this boy is not presently able to prepare and conduct his own defense in a rational manner without counsel. My opinion is that though this young man's intellect is at the border between mental retardation and borderline intellect, he is presently mentally competent."

11. Claimant was also seen for competency by Joy Smith Clark, Ph.D., a Clinical and Forensic Psychologist. She did an extensive interview and read records supplied to her including IEP reports and a school psychological evaluation dated August 18, 2004. She opined to the Juvenile Court judge that Eddie was not competent to stand trial. She specifically wrote: "His intellectual functioning is what qualifies him for being incompetent." In her *Conclusion*, she wrote: "Considering the information obtained during this evaluation, it is felt that Edward . . . is not competent to stand trial. His intellectual functioning impairs his judgment. He is rated to be functioning between an IQ of 59-71. This places him primarily in the retarded area. This is also a fairly stable level of functioning and not likely to improve."

12. Claimant had two other evaluations that are directly relevant to the question of eligibility. These involve the reports and testimony of two psychologists. One, Rob Zimmerman Ph.D., was and is employed by the Inland Regional Center. The second, Wolfgang Klebel, Ph.D., began seeing claimant for psychotherapy beginning in April 2006 and continued to see him twice per month through the date of the hearing. Both were competent and qualified to render an opinion on the question of eligibility for regional center services.

13. Dr. Klebel testified by phone and authored two reports. One was dated July 13, 2006 and the other October 20, 2006. Dr. Klebel has a most interesting background. He was born in Austria and was ordained as a Roman Catholic priest in or about 1961. He left the priesthood in 1969 and came to America and studied counseling psychology at Chapman University. He received his MS degree from Chapman in 1970 and his Ph.D. in clinical psychology from Fuller Graduate School in 1976. He was first licensed by the California Board of Psychology in 1979. He spent the first few years in private practice and then spent the next 15 years working as a psychologist in the California prison system. He retired from the prison work approximately three years ago and started a small private practice in Perris, California. The majority of his clients are children and teenagers. He has had some experience with the particular population that IRC serves although this was many years ago.

14. Dr. Klebel first met Eddie on April 28, 2006. He has had a psychotherapeutic relationship with Eddie since then. He has drawn certain conclusions about Eddie based upon his frequent therapy interactions and a review of certain documents supplied to him by Eddie's father. He has performed no testing of any type on Eddie.

15. Dr. Klebel testified by phone in a manner that was consistent with his reports of July 13 and October 20, 2006, which is Exhibit 16 in evidence. It is Dr. Klebel's opinion that Eddie suffers from Attention Deficit/Hyperactivity Disorder and mild mental retardation. He believes that Eddie's intellectual functioning is compromised. He wrote of Eddie:

> "His ability to think logically is very low, his thinking is concrete, and while able to learn simple concepts, any complex relationship is over his head. . . His understanding of moral concepts is equally limited and on a child's level, he must be explained exactly what action is wrong or right, he cannot see the implication of his action as this was demonstrated when preparing for court. His intellectual functioning is estimated by this psychologist to be approximately 70 or below. His adaptive functioning is impaired in several areas; he needs daily reminder in areas of hygiene. He has to be treated like an 8 year old, according to his grandfather, who is the adopted father taking care of him. . . Concluding, it has to be stated that Edward is functioning intellectually in the mild retarded range and that his adaptive functioning does not meet the standards of his age group in the area of self-care, home living, interpersonal and social skills, self direction, work and safety. Basically, he functions on the seven to eight year old level."

16. There are strengths and weaknesses in the opinions expressed by Dr. Klebel. The fact that he has seen Eddie approximately every two weeks over a very extended period of time in a therapy relationship lends great weight to many of is observations. It is clear that he see the essence of a good and decent young man who needs protection and guidance in his daily life. He confirms that Eddie has deficits that make his daily living a challenge. However, the question that must be addressed is whether Eddie is mentally retarded for the purpose of qualifying for services through the Inland Regional Center. A crucial component of such an accurate assessment requires the use of testing instruments that give a degree of objective content to what is otherwise subjective opining. Dr. Klebel paints with a very broad brush in very general terms. Unfortunately, the definition of mental retardation for the purpose of qualifying for services under the Lanterman Act requires a more precise analysis.

17. Claimant was also evaluated by Dr. Rob Zimmerman, a psychologist on staff at the Inland Regional Center. He performed the evaluation on May 16, 2006 and authored a report on May 22, 2006 which is Exhibit 15 in evidence. His testimony at the time of hearing was consistent with the substance and details of his report. It was his conclusion and professional opinion that Edward does not qualify for Regional Center services due to the absence of a developmental disability. He acknowledges that Eddie has deficits and that he faces many challenges. However, Eddie has a diagnosis of Attention Deficit/Hyperactivity Disorder and the strong suggestion (although it is not definitively established) that he has a learning disorder. On the WISC-IV administered, Eddie scored 81 in verbal and 82 in

performance for a full scale IQ (FSIQ) of 76. The weight of the credible evidence supports this conclusion and opinion.

18. Dr. Zimmerman's *Summary and Discussion* in the May 22, 2006 report sets forth in detail the reasons for his conclusion and opinion. He states:

> "Edward was referred for a psychological evaluation to better determine whether psychological aspects of a developmental disability exist. In general, Edward has consistently shown low average to average scholastic achievement and one measure of intellectual functioning showed verbal skills in the average range. He continues to show low average to average intellectual functioning and adaptive abilities.
>
> Edward reportedly was exposed to cocaine in utero. At 3 years of age, he contracted meningitis and also was the victim of physical abuse. He was subsequently adopted by a grandparent. Edward's school district has him classified as mentally retarded despite his showing low average to average scholastic achievement. This level of scholastic achievement appears to be recognized in his being mainstreamed for most of his academic activities. There is no evidence of him receiving specific treatments designed for the mentally retarded within the school district.
>
> The present assessment shows intellectual functioning in the high borderline to low average range with adaptive functioning being low average to average. Edward shows some difficulty with both numeric reasoning and visual-spatial skills. This may suggest a nonverbal learning disability such as a visual processing deficit. Further assessment by Edward's school district may be needed to clarify such a learning disability.
>
> The inconsistency of previous standardized scores appears to be related to both mood/behavioral conditions as well as attention deficits. Based on Edward's non-deficient intellectual and related and adaptive abilities, he is ineligible for regional center services under the criteria of mental retardation and/or a disabling condition similar to mental retardation or that requires treatments designed for the mentally retarded as defined in WIC section 4512; and/or Title 17, California Code of Regulations, section 54000."

19. Dr. Eliana Lois testified as an expert witness regarding Eddie's eligibility for Inland Regional Center services. She is a pediatrician employed full-time as the Chief of Medical Services for the IRC. She has been on the faculty in pediatrics at Loma Linda University Medical School for the last 27 years. As part of her duties as Chief, she supervises the intake unit which deals with eligibility questions relating to, among other things, mental retardation and the 5th Category. As Chief of the intake unit she did an informal assessment of Eddie and concluded, as did Dr. Zimmerman, that Eddie did not qualify for services. She noted his full scale IQ score of 76 on the WISC-IV and that his Adaptive Functioning scores were in the low average to average range although there were some areas of marked deficit. This, coupled with the wide spread noted on prior IQ tests between verbal and performance scales, clearly pointed in the direction of a learning

disability rather than mental retardation. Eddie, Dr. Lois noted, has a long history of ADHD and years of medication. When she saw a disparity from 95 to 74 in verbal scores over a period of years, her opinion was that the most likely cause was inattention on the day of testing related to ADHD. Her testimony also established that a diagnosis of mental retardation cannot legitimately be made solely on the basis of observation. Observation (as in Dr. Klebel's evaluation) can provide useful information but is not reliable without good test results.

20. It was undisputed that Claimant had significant disabilities, but there was wide divergence on his diagnosis. The most persuasive and compelling opinions were rendered by the IRC experts.

21. The administrative court had the benefit of the testimony of three experts, Drs. Klebel, Lois and Zimmerman. Although Dr. Klebel testified that Eddie was mentally retarded, his opinion was supported by little more than his impressions from counseling sessions. Drs. Lois and Zimmerman competently testified and established that Claimant was not developmentally disabled (as defined by the Lanterman Act), and that he did not qualify for regional center services. All three experts were well-qualified and they gave helpful information to the administrative law judge. However, only Dr. Lois and Zimmerman gave a comprehensive and persuasive explanation why Claimant was not mentally retarded or otherwise qualified for regional center services. Although there is evidence in the record to support a finding that claimant might be mentally retarded, it is far less persuasive than the evidence to the contrary. One of the great challenges in accurately diagnosing a teenager such as claimant is the definitional overlap in the various DSM categories. What the categories try to capture is a description of a cluster of behaviors and qualities. Unfortunately, many behaviors and qualities are linked to more than one diagnostic criterion. Although there are opinions expressed by some that claimant was mentally retarded, these opinions were not as well substantiated by detailed evaluations that included a broad spectrum of testing. As a result, Claimant's evidence was not sufficient to demonstrate, by a preponderance of evidence, that he had a qualifying developmental disability.

Mental Retardation or a Disabling Condition Similar to Retardation

22. The issue to be determined in this case was whether claimant qualified for regional center services due to mental retardation. The evidence in this case was insufficient to establish qualification. In the future there may be more information of a definitive nature that changes this result. That remains to be seen.

At this point, Eddie exhibits some of the signs that are associated with mental retardation. However, the totality of his behaviors, strengths and deficits, along with his developmental history, point more in the direction of the diagnosis by Zimmerman and Lois, that of ADHD and a possible learning disability.

23. Despite mention of the 5th Category as a potential qualifying condition there was no substantial evidence proffered to show such a condition. Eligibility for regional center services under the 5th Category requires a determination whether an individual

functions in a manner that is similar to that of a person with mental retardation or requires treatment similar to that required by individuals with mental retardation. The weight of the credible evidence supports a finding that the conditions that claimant exhibits are consistent and likely the result of his ADHD and a learning disability. The only substantial evidence regarding the type of treatment and support claimant would need was provided by Dr. Lois and Dr. Zimmerman. Those supports and services involved continuing special educational services to clarify the nature of his learning difficulties and vocational rehabilitation.

LEGAL CONCLUSIONS

The Lanterman Act

1. The Lanterman Developmental Disabilities Services Act (Act) is contained in the Welfare and Institutions Code. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Act is to provide a "pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life." (§ 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Developmental Disability

2. Section 4512, subdivision (a) of the Act defines a developmental disability as follows:

> "(a) 'Developmental disability' means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature."

3. Section 54000 of Title 17 of the California Code of Regulations further defines the term developmental disability:

> "(a) 'Developmental Disability' means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.
>
> (b) The Developmental Disability shall:
>
> (1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation."

Burden of Proof

4. In a proceeding to determine eligibility, the burden of proof is on the Claimant to establish he or she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

The Evidence Was Not Sufficient to Establish That Claimant Was Eligible for Regional Center Services

5. Claimant's major contention was that he qualified for regional center services under a diagnosis of mental retardation or the so called 5th Category. The evidence was not sufficient to support this contention. To the contrary, the evidence supporting the regional center's denial of eligibility was very persuasive.

6. No one test is diagnostic for mental retardation. One must look at a variety of sources to determine whether the totality of factors considered satisfies the criteria in the DSM IV TR. Although we strive for objectivity in diagnosis, there remains a fair amount of subjectivity in applying the criteria of DSM IV TR. Based on the evidence presented in this case, it is more likely than not that claimant suffers, not from mental retardation, but from

some other condition. At this time, based upon the evidence, the two diagnoses that seem most consistent with his symptom profile are ADHD and learning disability.

7. These conclusions are based on all the factual findings and legal conclusions.

ORDER

The IRC's conclusion, that claimant does not qualify for regional center services, is upheld. Claimant failed to meet his burden of proof that he is entitled to regional center services under the Lanterman Act.

DATED: _____

_____
STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.